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EXAMINER

BASTIANELLI, JOHN

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/783,567
Filing Date: February 20, 2004
Appellant(s): BARRON ET AL.

**MAILED
JUL 16 2007
GROUP 3700**

John L. Rogitz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 14, 2007 appealing from the Office action mailed October 10, 2006.

Art Unit: 3753

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,915,416	OKAZAKI ET AL.	6-1999
5,282,329	TERANISHI	2-1994
3,907,046	GAYLORD	9-1975

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 4-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Okazaki et al. US 5,915,416 in view of Teranishi US 5,282,329.

Okazaki discloses a solenoid valve having a valve housing supporting a coil 48; a ball 51 in the valve housing, a valve seat 41e in the valve housing, and a rod 56 reciprocatingly disposed in the valve housing between a deenergized configuration, wherein the coil is deenergized and the ball is against the valve seat, and an energized configuration, wherein the coil is energized and the rod is urged against the ball to move the ball away from the valve seat, wherein the valve housing defines the valve seat and is made integrally with a winding bay 41, the coil being wound in the winding bay, and the valve housing has a ball retainer rib 52 defining a supply port 42 having a first diameter and the ball between the rib and the valve seat in a second diameter larger than the first diameter, wherein the rib is not deformable and the ball is not passed through the rib. Okazaki lacks the rod distanced from the ball in the deenergized position. Teranishi discloses a rod 25 distanced from a ball 17 in the deenergized position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rod and ball as disclosed by Okazaki with the rod distanced from the ball by .1 to .8 mm in order to reduce hysteresis (col. 5, lines 39-43) as disclosed by Teranishi. The valve housing defines a control port 43 and an exhaust port 44. A vehicle fluid system communicates with the valve. The valve has a primary plate 45 and a terminal 46 with the housing injection molded around the plate and terminal to form the valve seat and winding bay.

Claims 7 and 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Okazaki et al. US 5,915,416 in view of Gaylord US 3,907,046.

Okazaki lacks the rib being deformable. Gaylord discloses a deformable rib 30 in which a valve passes through. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rib of Okazaki deformable as disclosed by Gaylord in order to take less steps in assembling the valve. The examiner would like to note that “is pressable through the rib” is a product by process claim. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product in the prior art, the claim is unpatentable even though the prior product was made by a different process (see MPEP 2113).

(10) Response to Argument

The examiner would like to note that the appellant apparently has not read fully the examiner's response to arguments regarding claim 1 in the final office action of October 10, 2006 which the appellant has termed a “boilerplate accusation”. The examiner states at the end of the “boilerplate accusation” that “Teranishi clearly discloses the rod separated from the ball which is the feature used by the examiner”. The reason that the examiner has included the beginning part about “attacking references individually” is that the only feature of Teranishi that the examiner is using to modify Okazaki is that the rod is separated from the ball when the ball is in the closed position. The appellant is attacking Teranishi regarding energized and de-energized positions when the examiner is using Okazaki so show the energized and de-energized position of the valve (Okazaki, Fig. 4 is in de-energized state with the ball being in the closed position and Fig. 6 is in energized state with the ball being in the open position) and not Teranishi. The

Art Unit: 3753

examiner is using the feature of Teranishi that the rod is distanced from the ball in the ball's closed position before striking it to move it to the open position. The examiner would like to note that the rod is seen to move away from the ball by at least .1 mm at some point when de-energized which meets the between a range of .1-.8 mm when in a de-energized configuration. Reasons for modifying is to reduce hysteresis as disclosed by Teranishi or to have an impact force to move the ball off of the seat by the rod more easily than if the rod and ball were connected.

Regarding appellant's 3 arguments regarding claim 7, the appellant is wrong that the valve seat 30 has been used as the deformable rib and the valve plug 62 has not been used as the claimed ball. And once again, the examiner would like to note that the appellant apparently has not read fully the examiner's response to arguments regarding claim 7 in the final office action of October 10, 2006 which he has termed a "boilerplate accusation". The examiner is using "Okazaki as the base reference and modified by Gaylord" is at the end of the "boilerplate accusation".

1. Okazaki (base reference) shows the ball, not Gaylord (modifying reference).
2. Okazaki discloses the rib. The examiner is using Gaylord who discloses a rib that is deformable. The examiner is using this feature to modify the rib 52 of Okazaki.
3. Okazaki discloses the rib defining a supply port, not Gaylord.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3753

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John Bastianelli

/John Bastianelli/

Primary Examiner, Art Unit 3753

Conferees:

Eric Keasel

A handwritten signature in black ink that reads "Eric Keasel". The signature is written in a cursive style with a large, stylized "E" and "K".

Kevin Shaver

A handwritten signature in black ink that reads "Kevin Shaver". The signature is written in a cursive style with a large, stylized "K" and "S".